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No. 01-1877

In the Supreme Court of the United States

ANTONIO GRANADOS-MONDRAGON, PETITIONER

v.

IMMIGRATION AND NATURALIZATION SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether an alien who pleads guilty to a criminal charge of entering the United States unlawfully and without inspection, in violation of 8 U.S.C. 1325(a), is collaterally estopped from relitigating in a later deportation proceeding the issue of whether he entered the United States.

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OPINIONS BELOW

The memorandum opinion of the court of appeals (Pet. App. 1a-3a) is not reported in the *Federal Reporter*, but is reprinted at 28 Fed. Appx. 695. The decisions of the Board of Immigration Appeals (Pet. App. 4a-6a) and the immigration judge (Pet. App. 7a-15a) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on January 17, 2002. A petition for rehearing was denied on March 26, 2002 (Pet. App. 16a). The petition for a writ of certiorari was filed on June 21, 2002. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Petitioner is a Mexican citizen. Pet. App. 5a. According to petitioner, he first entered the United States in 1979, when he illegally crossed the border into California. A.R. 252 (petitioner's application for suspension of deportation). Petitioner represents that he left the United States and returned unlawfully four more times between 1980 and 1988. *Ibid.* Petitioner became a lawful permanent resident of the United States in 1990. Pet. 4.

2. On July 22, 1991, the United States filed a criminal complaint against petitioner in the United States District Court for the Southern District of California, charging him with misdemeanor unlawful entry into the United States in violation of 8 U.S.C. 1325. A.R. 153. Section 1325(a) provides in pertinent part:

> Any alien who (1) enters or attempts to enter the United States at any time or place other than as designated by immigration officers, or (2) eludes examination or inspection by immigration officers * * * shall, for the first commission of any such offense, be fined under title 18 or imprisoned not more than 6 months, or both.

8 U.S.C. 1325(a). The criminal complaint in petitioner's case alleged that, on or about July 20, 1991, petitioner "did knowingly and willfully enter the United States at a time and place other than as designated by immigration officers, and elude examination and inspection by immigration officers." A.R. 153.

Petitioner, who was represented by counsel, pleaded guilty to the complaint after being informed of the charges. A.R. 152 (judgment of conviction). Petitioner

was sentenced to 45 days' imprisonment and a fine of $10.00. *Ibid.*

3. The Immigration and Naturalization Service (INS) charged petitioner with being deportable from the United States under former Section 241(a)(1)(B) of the Immigration and Nationality Act (INA), 8 U.S.C. 1251(a)(1)(B) (1994), for having entered the United States without inspection on or about July 20, 1991. A.R. 285-287. At a hearing held before an immigration judge on May 28, 1992, the INS offered into evidence certified copies of the criminal complaint against petitioner and petitioner's judgment of conviction. A.R. 66, 69, 151-153. A Border Patrol Agent testified that, on July 20, 1991, he observed petitioner and a woman "climb[] down the international boundary fence, r[u]n across a drag road and towards the area [known as] the projects and then * * * exit[] the area of the projects and enter[] a vehicle." Pet. App. 18a.

Petitioner, however, disputed that he entered the United States unlawfully on July 20, 1991. Petitioner testified at the hearing that he arranged in Mexico for his wife to be smuggled over the border, and then crossed into the United States through an inspection station, met his wife along the border, and helped her up from the ground after she fell from the border fence. A.R. 117, 121-123. Petitioner testified that he pleaded guilty to entering the United States unlawfully and without inspection because he desired a swift resolution of the criminal matter. A.R. 122. Based upon petitioner's testimony, the INS lodged an additional charge that petitioner is deportable pursuant to former Section 241(a)(1)(E)(i) of the INA, 8 U.S.C. 1251(a)(1)(E)(i) (1994), for aiding and abetting an alien's unlawful entry or attempted unlawful entry into the United States. A.R. 146.

On July 27, 1993, the immigration judge ordered petitioner deported. Pet. App. 15a. Although the immigration judge determined (*id.* at 9a-12a) that in the circumstances of this particular case the doctrine of collateral estoppel should not be applied to bar a redetermination of whether petitioner made an unlawful entry into the United States, he found on the merits (*id.* at 13a) that petitioner's account of the events on July 20, 1991, was not credible and that petitioner "did in fact enter the U.S. by crawling over the border fence" with his wife and thus was deportable for entering the United States without inspection. The immigration judge also found petitioner deportable on the charge of aiding and abetting his wife's illegal entry. *Id.* at 13a-14a.

4. The Board of Immigration Appeals (BIA) dismissed petitioner's appeal. Pet. App. 4a-6a. The BIA concluded that petitioner's criminal conviction for unlawful entry sufficed under the doctrine of collateral estoppel to establish that petitioner entered the United States without inspection. *Id.* at 5a. The BIA held that "the threat of jail and the possibility of deportation were ample motivation for [petitioner] to fully litigate the issue" of his entry into the United States in the criminal proceeding. *Ibid.* The BIA further determined that the issue of petitioner's unlawful entry into the United States "is the same in both proceedings." *Ibid.* The BIA determined that petitioner is also deportable on the aiding-and-abetting charge and that he is ineligible for relief from deportation. *Id.* at 6a.

5. In a petition for judicial review, petitioner challenged his deportability for having entered the United States without inspection, arguing that the BIA erred in applying the doctrine of collateral estoppel to bar him from relitigating the issue of whether he entered the

United States unlawfully on July 20, 1991. The court of appeals denied the petition in an unpublished memorandum. Pet. App. 1a-3a. Citing "settled law * * * that a guilty plea may be used to establish issue preclusion in a subsequent civil suit," the court of appeals affirmed the BIA's application of collateral estoppel in this case. *Id.* at 2a (quoting *United States* v. *Section 18*, 976 F.2d 515, 519 (9th Cir. 1992)).

The court of appeals determined that the BIA used petitioner's criminal conviction only "to preclude [petitioner] from relitigating the issue of whether he entered the country without inspection in violation of [the INA]," and that such use of the conviction was sufficient to support petitioner's deportation for entering the United States without inspection. Pet. App. 3a. The court rejected petitioner's argument that *Haring* v. *Prosise*, 462 U.S. 306 (1983), renders collateral estoppel inapplicable to guilty pleas. Pet. App. 2a. The court also rejected petitioner's claim that, because his sentence in the criminal case was "relatively minor," petitioner lacked motivation to litigate the criminal charge, and the criminal conviction therefore should not support collateral estoppel in the deportation proceeding. *Id.* at 3a. The court of appeals emphasized that, even though petitioner was sentenced to "only" 45 days' imprisonment, he could have been sentenced to imprisonment for as much as six months, which provided ample motivation to litigate the charge. *Ibid.*

Senior Judge Politz of the Fifth Circuit, sitting by designation, dissented without opinion. Pet. App. 2a n.*, 3a.

ARGUMENT

Petitioner pleaded guilty to entering the United States unlawfully and without inspection on or about

July 20, 1991, in violation of 8 U.S.C. 1325. Pet. 5; A.R. 151-153. By pleading guilty, petitioner admitted that he entered the United States without inspection—the same fact that he now disputes. The court of appeals' unpublished decision upholding the Board of Immigration Appeals' application of collateral estoppel in this case is correct and does not conflict with any decision of this Court or of another court of appeals. Furthermore, the BIA held that petitioner is independently deportable for having aided and abetted his wife's illegal entry. The court of appeals did not disturb that ruling, and petitioner does not challenge it here. For all of these reasons, review by this Court is not warranted.

1. As this Court has held, "a guilty plea is an admission of all the elements of a formal criminal charge." *McCarthy* v. *United States*, 394 U.S. 459, 466 (1969); see *Menna* v. *New York*, 423 U.S. 61, 62 n.2 (1975) (per curium) ("[A] counseled plea of guilty is an admission of factual guilt so reliable that, where voluntary and intelligent, it *quite validly* removes the issue of factual guilt from the case."). Under Rule 11 of the Federal Rules of Criminal Procedure, a federal trial judge may not accept a guilty plea to a criminal offense unless he satisfies himself that there is a factual basis for the plea. See Fed. R. Crim. P. 11(f) & advisory committee note (1974); *McCarthy*, 394 U.S. at 467.

The courts of appeals accordingly have determined that, for purposes of collateral estoppel, a federal conviction following a guilty plea "is as much a conviction as a conviction following jury trial." *Gray* v. *Commissioner*, 708 F.2d 243, 246 (6th Cir. 1983), cert. denied, 466 U.S. 927 (1984). Therefore, a federal guilty plea and ensuing conviction collaterally estop a litigant from relitigating in a federal civil proceeding any material

facts or elements necessarily established by the plea. See *United States* v. *Wight*, 839 F.2d 193, 195 (4th Cir. 1987) (guilty plea to accepting gratuities estops ex-official in later civil suit to recover gratuity amounts); *Gray*, 708 F.2d at 246 (guilty plea to federal income tax evasion establishes fraud in subsequent civil tax fraud proceeding); *In re Raiford*, 695 F.2d 521, 523-524 (11th Cir. 1983) (guilty plea to bankruptcy fraud bars relitigation of factual issues in bankruptcy proceeding); *Fontneau* v. *United States*, 654 F.2d 8, 10 (1st Cir. 1981) (guilty plea and conviction for federal income tax evasion has preclusive effect in civil suit); *Ivers* v. *United States*, 581 F.2d 1362, 1367 (9th Cir. 1978) (facts necessarily determined by conviction based on guilty plea cannot be relitigated in forfeiture proceeding); *United States* v. *Podell*, 572 F.2d 31, 35 (2d Cir. 1978) ("It is well-settled that a criminal conviction, whether by jury verdict or guilty plea, constitutes estoppel in favor of the United States in a subsequent civil proceeding as to those matters determined by the judgment in the criminal case."); *Brazzell* v. *Adams*, 493 F.2d 489, 490 (5th Cir. 1974) (guilty plea to selling heroin estops prisoner from arguing, in action under 42 U.S.C. 1983, that he engaged in transaction with the belief that he was assisting state agents); *Plunkett* v. *Commissioner*, 465 F.2d 299, 305-306 (7th Cir. 1972) (convictions for tax evasion pursuant to guilty plea collaterally estops defendant from denying fraud in civil tax fraud proceedings).

Consistent with those decisions, the BIA has for almost 50 years adhered to the rule that an alien's guilty plea and conviction in a criminal proceeding estops the alien from relitigating, in a subsequent deportation proceeding, a determination of fact necessary to the criminal conviction. See *In re Z*, 5 I. & N. Dec.

708, 709-711 (BIA 1954) (alien who pleaded guilty to procuring visa by false statement precluded from relitigating issue of whether he entered United States without valid visa). It likewise is well-settled in BIA precedent that a criminal conviction for illegal entry into the United States collaterally estops the alien from relitigating the fact of unlawful entry. See *In re Rina*, 15 I. & N. Dec. 346, 346-347 (BIA 1975).

Two courts of appeals have addressed the specific question presented in this case. Both have upheld the BIA's determination that a guilty plea in a prosecution under 8 U.S.C. 1325(a) for unlawfully entering the United States estops the alien from disputing in a later deportation proceeding that he entered the country illegally. Pet. App. 2a-3a; *Marroquin-Manriquez* v. *INS*, 699 F.2d 129, 136 (3d Cir. 1983), cert. denied, 467 U.S. 1259 (1984). Petitioner identifies no judicial decision that resolves that issue differently.

2. Petitioner attempts—in the face of that uniform authority—to show a circuit conflict. Pet. 10-17. Petitioner's attempt lacks merit. In *Bower* v. *O'Hara*, 759 F.2d 1117 (1985), and *Anela* v. *City of Wildwood*, 790 F.2d 1063, cert. denied, 479 U.S. 949 (1986), the Third Circuit addressed the preclusive effect of guilty pleas under territorial and state law, respectively. See *Bower*, 759 F.2d at 1124-1126 (discussing American Law Institute debates, as indicative of Virgin Islands law); *Anela*, 790 F.2d at 1068-1069 (New Jersey law). Those Third Circuit cases do not involve the preclusive effect of a federal conviction in a federal administrative proceeding. The Third Circuit addressed the specific issue raised by petitioner in *Marroquin-Manriquez*, which accords with the Ninth Circuit's decision in this case.

In *United States* v. *Gallardo-Mendez*, 150 F.3d 1240 (1998), on which petitioner also relies (Pet. 11), the Tenth Circuit addressed the question of whether a guilty plea has collateral estoppel effect in a later *criminal prosecution*. The Tenth Circuit specifically distinguished cases applying collateral estoppel doctrine in the civil context (150 F.3d at 1244-1245), stating that "while wise public policy and judicial efficiency may be sufficient reasons to apply collateral estoppel in civil cases, they do not have the same weight and value in criminal cases" (*id.* at 1244 (internal quotation marks omitted)).

3. As the court of appeals correctly held (Pet. App. 2a), its decision in this case does not conflict with *Haring* v. *Prosise*, 462 U.S. 306 (1983). In *Haring*, this Court held that a Virginia prisoner who pleaded guilty to a state-law drug offense was not thereby precluded from challenging, in a suit under 42 U.S.C. 1983, the lawfulness of the search that led to his arrest. Looking to Virginia law, the Court concluded that the doctrine of collateral estoppel would not be applied by courts in that State under those circumstances. 462 U.S. at 316. The Court noted that the guilty plea did not amount to "actual[] litigat[ion]" of the issues underlying the criminal conviction, but further explained that the prisoner's plea did not bar his civil suit because the plea did not involve any issue on which the prisoner had to prevail in order to win his Section 1983 action. *Ibid.* The Court observed that "[t]he only question raised by the criminal indictment and determined by [the prisoner's] guilty plea * * * was whether [the prisoner] unlawfully engaged in the manufacture of a controlled substance," which "is simply irrelevant to the legality of the search under the Fourth Amendment or to [the prisoner's] right to compensation from state

officials under § 1983." *Ibid.* In this case, by contrast, petitioner seeks to relitigate the unlawful-entry issue that was framed by the criminal indictment and necessarily determined by his guilty plea in a *federal* court. *Haring* therefore is inapposite.

Petitioner nevertheless relies (Pet. 18, 20-21) upon a 19-year-old decision, *Otherson* v. *Department of Justice*, 711 F.2d 267 (1983), in which the D.C. Circuit "questioned," in light of *Haring*, "whether 'a live debate remains over the preclusive effect of guilty pleas.'" Pet. 21 (quoting *Otherson*, 711 F.2d at 277 n.11). Yet the *Otherson* court acknowledged that *Haring*'s "actual[] litigat[ion]" language "was broader than needed to decide the issue" in the case before this Court. 711 F.2d at 275 n.8. Furthermore, the D.C. Circuit's discussion of *Haring* was dictum. *Ibid.* Neither the D.C. Circuit nor any other court of appeals has held that *Haring* bars collateral estoppel in civil proceedings—much less in administrative deportation proceedings—based upon a federal conviction obtained by a plea of guilty.

4. Petitioner's claim that giving collateral estoppel effect to guilty pleas undermines Rule 11 of the Federal Rules of Criminal Procedure (Pet. 22-24) likewise lacks merit. The BIA has given collateral estoppel effect to guilty pleas in immigration proceedings for almost 50 years, and the courts of appeals have uniformly sustained the application of collateral estoppel in civil proceedings, all without any indication of an adverse effect on the process of accepting guilty pleas under Rule 11.

5. Finally, it is highly unlikely that—as petitioner argues (Pet. 2)—the disposition of this petition will affect "[t]he course of [petitioner's] life." The immigration judge found on the merits, without reliance

upon collateral estoppel, that petitioner is deportable because he "did in fact crawl over the border fence" on July 20, 1991. Pet. App. 13a. Furthermore, the BIA affirmed the immigration judge's determination that petitioner also is deportable because he aided and abetted his wife's illegal entry. *Id.* at 6a. In light of those determinations, it is highly unlikely that petitioner would avoid deportation from the United States even if the collateral estoppel issue were resolved in his favor.

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted.

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